



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** Braswell Services Group, Inc.

**File:** B-278921.2

**Date:** June 17, 1998

Patricia H. Wittie, Esq., and Karla J. Letsche, Esq., Wittie & Letsche, for the protester.

Sharon Hershkowitz, Esq., Jannika E. Cannon, Esq., Lisa L. Hare, Esq., and Catherine A. D'Andrea, Esq., Department of the Navy, for the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## **DIGEST**

1. Agency reasonably evaluated protester's past performance as unsatisfactory where record shows that the protester's most relevant contract performance was reasonably perceived as inadequate by the agency, notwithstanding protester's allegations that the agency overstated the scope and significance of the performance deficiencies.
2. Agency reasonably evaluated awardee's past performance record as satisfactory, which was the rating closest to a neutral assessment, where the agency did not have available on file past performance rating information for the awardee which it viewed as sufficient to permit a full evaluation; satisfactory rating did not overstate the record, since agency had orally received a favorable overall assessment of the awardee's relevant performance by a cognizant contracting official.
3. Agency selection of slightly higher-priced proposal with a satisfactory past performance rating instead of the lower-priced proposal with an unsatisfactory rating was reasonable and consistent with the solicitation's evaluation scheme, which weighted past performance as slightly more important than price.

## **DECISION**

Braswell Services Group, Inc. protests the award of a fixed-price contract to Earl Industries under request for proposals (RFP) No. N62670-98-R-0003, issued

by the Department of the Navy for the restricted availability (RAV)<sup>1</sup> of the USS DEWERT. Braswell argues that the Navy's past performance evaluation was unreasonable and that the agency failed to award the contract on the basis of the best value to the government, as required by the RFP.

We deny the protest.

## BACKGROUND

The RFP was issued on December 8, 1997 by the supervisor of shipbuilding conversion and repair (SUPSHIP), U.S. Navy, Jacksonville, Florida and consisted of approximately 40 work items. The period of performance was March 23 through May 6, 1998. The RFP was restricted to offerors possessing Master Ship Repair Agreements (MSRA).<sup>2</sup> Award was to be made to the offeror whose proposal was most advantageous to the government under two criteria: (1) past performance and (2) price. Past performance was to be evaluated based on the following factors: quality of product or service, timeliness of performance, and contracting/business relations, with greater consideration being given to contracts requiring the same or similar type and complexity of work as that required by the RFP. Section M-6(c)(1) of the RFP provided that for award determination, "[p]ast performance is approximately equal to [p]rice, with [p]ast [p]performance being more important than [p]rice." The solicitation at section L-2-8 permitted offerors to submit any information considered relevant to the Navy's evaluation of their past performance and to provide corrective action taken to prevent recurrence of past performance problems. This section indicated that the Navy has performance information readily available and sought primarily "additional information," requiring offerors to submit a list of all ship repair work performed for the government in the last 3 years that exceeded \$500,000, "to assist the [Navy] in performing the past performance evaluation."

The Navy received proposals from six offerors by the January 14 closing date. One offeror withdrew prior to evaluation of proposals. The past performance evaluation team (PPET) reviewed the past performance file that it had for each of the five remaining offerors. SUPSHIP Jacksonville had available past performance evaluations for the last Chief of Naval Operations (CNO) scheduled availability performed by three offerors, including Braswell. Braswell's evaluation was

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<sup>1</sup>A "RAV" is a short, labor-intensive repair effort or "availability" for the accomplishment of specific items of work while the ship is in its homeport and rendered incapable of performing its assigned mission and tasks.

<sup>2</sup>Braswell maintains an agreement for boat repair (ABR), not an MSRA, but is permitted to compete for MSRA-restricted work based on a prior settlement agreement with the agency.

primarily based on its performance in 1997 of repairs to the USS MOOSBRUGGER, which was included in its past performance file. Under the USS MOOSBRUGGER evaluation, Braswell received an overall rating of unsatisfactory with a marginal rating for quality of product or service and timeliness of performance and an unsatisfactory rating for contracting business relations. Braswell's past performance file also contained two lists of contracts it submitted with its proposal and letters Braswell had written to rebut various aspects of the USS MOOSBRUGGER evaluation. Earl had not previously completed a CNO availability under SUPSHIP Jacksonville and consequently it had no relevant past performance information on file.

After reviewing the past performance of the three offerors on file, the PPET summarized these offerors' respective strengths, weaknesses, and risks, and arrived at an overall adjectival past performance rating. The PPET concluded that none of the documents in Braswell's past performance file affected Braswell's overall unsatisfactory past performance rating under the USS MOOSBRUGGER evaluation. The PPET did change Braswell's risk assessment in the quality of product or service subfactor from significant to moderate based on Braswell's proposed corrective actions, primarily because of Braswell's stated commitment to place its environmental coordinator on site and to improve timeliness of quality deficiency reports (QDR) resolution. Since Earl and another offeror did not have any past performance information on file, [DELETED], they each received an overall rating of "satisfactory."

On February 3, the best value evaluation board (BVEB) reviewed the findings of the PPET and ranked the offerors based on their past performance ratings as follows:

- (1) Offeror A - Satisfactory, with overall risk deemed slight
- (1) Offeror B - Satisfactory, with overall risk deemed slight
- (2) Earl - Satisfactory, with overall risk deemed moderate
- (2) Offeror C - Satisfactory, with overall risk deemed moderate
- (3) Braswell - Unsatisfactory, with overall risk deemed significant

The BVEB then considered the total price submitted by the offerors and ranked them as follows:

Offeror B	\$ 776,735
Braswell	\$ 892,639
Earl	\$ 947,000
Offeror C	\$ 1,013,352
Offeror A	\$ 1,458,995

The BVEB then compared each offeror to each other and ranked the best value to the government of offerors in descending order as follows: (1) Offeror B; (2) Earl; (3) Braswell; (4) Offeror C; and (5) Offeror A. The BVEB recommended award to

Offeror B as representing the best value and on February 9, the contracting officer agreed. On February 12, Offeror B withdrew its offer. On February 20, the contracting officer awarded the contract to Earl as representing the best value to the government.

On March 3, SUPSHIP Jacksonville provided a written debriefing to Braswell and notified Braswell of its and Earl's past performance ratings. On March 9, Braswell filed this protest with our Office. On March 20, the head of the procuring agency determined that urgent and compelling circumstances warranted continuation of contract performance, notwithstanding the pendency of the protest. Performance of the contract has been completed.

#### PAST PERFORMANCE

Braswell challenges the agency's evaluation of past performance and maintains that the agency improperly relied on the USS MOOSBRUGGER past performance evaluation on file to rate Braswell's performance as unsatisfactory. Braswell argues that the USS MOOSBRUGGER evaluation was arbitrary and irrational in that it excluded all positive aspects of Braswell's performance and that the Navy ignored proposed and implemented corrective action. Braswell also contends that the agency failed to evaluate past performance in accordance with the terms of the solicitation by ignoring the list of prior ship repair work that Braswell submitted in its proposal.

As indicated above, the solicitation provided that the agency would evaluate past performance based on the information contained in its files but also allowed offerors to supplement the file with additional information the offerors considered essential to the Navy's evaluation. To assist in the past performance evaluation, offerors were asked to provide a list of all ship repair work with a value over \$500,000 performed for the government in the last 3 years.

The agency's past performance file on Braswell consisted of the one evaluation for the USS MOOSBRUGGER. Under that evaluation, Braswell had been rated unsatisfactory overall with a significant risk of poor performance. Braswell received a marginal rating for quality of product or service and timeliness of performance and an unsatisfactory rating for contracting/business relations. The risk of failure with respect to timeliness and contracting/business relations was considered significant while the risk of failure in the quality of product or service was changed by the PPET from "significant" to "moderate" based on the agency's review of Braswell's proposed corrective actions. The USS MOOSBRUGGER evaluation listed several strengths for Braswell: it noted that there were no major discrepancies, that reports were generally accurate, that the firm generally met contract milestones, that technical problems were promptly identified, and that there was no major rework. However, it also contained the following weaknesses: the time to satisfactorily close QDRs/safety deficiency reports (SDRs) was

excessive; management assignments were ineffective; the firm was obstructive in contract administration and unresponsive to contract changes; excessive time was used to scope and negotiate changes; there was an inability to accommodate change work; the firm's remote environmental management was not effective; and the firm was unreasonable, uncooperative and disputatious. The PPET concluded that most of Braswell's weaknesses were connected to its management and its ability to price and accommodate changes. Although the PPET found that Braswell did generally meet contract milestones, the agency determined that this was usually after significant growth work was removed from the contract and that several bid items had to be completed independently of the contract to allow those milestones to be met. The PPET also concluded that Braswell had provided no information in its proposal that would alter this past performance rating.

We will review an evaluation of an offeror's performance risk to ensure that it was reasonable and consistent with the stated evaluation criteria. Dragon Servs., Inc., B-255354, Feb. 25, 1994, 94-1 CPD ¶ 151 at 6. An agency's evaluation of past performance may be based upon the procuring agency's reasonable perception of inadequate prior performance, even where the contractor disputes the agency's interpretation of the facts. Pannesma Co. Ltd., B-251688, Apr. 19, 1993, 93-1 CPD ¶ 333 at 6. This record provides us no basis upon which to object to the Navy's conclusion regarding Braswell's past performance. In its proposal, Braswell provided a list of prior ship repair work, much of it for relatively small dollar value contracts (substantially less than \$500,000) with no additional or explanatory information. The protester's successful performance of these listed contracts does not negate the agency's conclusion about the firm's performance of the USS MOOSBRUGGER availability, a prior SUPSHIP Jacksonville contract. While the solicitation allowed offerors to submit information in addition to that which SUPSHIP Jacksonville had readily available, it also placed offerors on notice that SUPSHIP Jacksonville intended to rely primarily on its own internal documentation regarding an offeror's performance history. Moreover, the USS MOOSBRUGGER was the most recent example of Braswell's work for SUPSHIP Jacksonville that involved repairs of a type and complexity similar to that required by the USS DEWERT.

It is clear that there existed significant problems in the performance of the ship repairs on the USS MOOSBRUGGER, the contract which the agency reasonably viewed as most relevant in terms of the type and complexity of work required. A significant percentage of the problems involved responding to and negotiating growth work, which resulted in delays in pricing and negotiating changes and disputes over contract administration procedures. For example, Braswell disputed most QDRs and SDRs before acknowledging that corrective action was necessary, resulting in lengthy cycle time; Braswell assigned only one person to perform the functions of material control manager, purchasing agent, and government furnished material clerk, resulting in the need for the government to expend additional resources with respect to these functions; and Braswell used an off-site corporate

safety director, causing delayed responses to problems. Additionally, Braswell applied a labor rate of \$13.56 per hour with no overhead, no general and administrative expense, and no profit factors for the USS MOOSBRUGGER when work was deleted, while insisting on a labor rate of \$24.68 for work added to the contract by change order. Braswell's explanations and disputes with respect to various specific incidents and aspects of these problems do not call into question the reasonableness of the agency's assessment that Braswell's performance was seriously flawed.

The record also does not support Braswell's contention that SUPSHIP Jacksonville did not take into consideration its proposed corrective action to alleviate some of the concerns in the USS MOOSBRUGGER evaluation. On the contrary, the agency reviewed and considered Braswell's proposed corrective action in assessing Braswell's risk of successful performance and as a result changed its risk of failure from significant to moderate with respect to quality of product or service. Although Braswell offers explanations and interpretations of the record that provide a more favorable picture of Braswell's performance on the USS MOOSBRUGGER than the agency's, this does not alter the fact that there was sufficient evidence for the agency to conclude that the firm had a series of substantial performance problems under the prior contract, which warranted a negative past performance assessment.

With respect to Braswell's contention that its list of other contracts was not properly considered in the past performance evaluation, there is no legal requirement that all references listed in a proposal be checked. Questech, Inc., B-236028, Nov. 1, 1989, 89-2 CPD ¶ 407 at 3. Even presuming that Braswell's listed references would have reported favorably on Braswell's performance, the agency was reasonably entitled to rely on its file record of the USS MOOSBRUGGER evaluation as providing the most relevant information for purposes of this procurement.

Braswell also argues that the Navy's evaluation of Earl's past performance was unreasonable and improper. Specifically, Braswell objects that Earl's proposal failed to contain a list of prior ship repair work that it had, in fact, performed and of which the agency was aware.

Earl's failure to list prior work in its proposal does not in itself call into question the propriety of the past performance evaluation, since the purpose of that list was to merely assist the agency in performing the past performance evaluation. The solicitation language makes clear that a list provided by an offeror was intended only to supplement the agency information of record, which the agency planned to use as its primary source for past performance evaluation. In fact, here, Earl's failure to provide past performance information could only have had a negative impact on its past performance evaluation. As noted above, Earl received a satisfactory/neutral rating with a moderate risk of successful performance. The

record includes an affidavit from the Chief of the Contracts Office at SUPSHIP Portsmouth stating that he told the contracting officer at SUPSHIP Jacksonville that his office did not collect past performance data on contracts awarded prior to February 1, 1998, and that he did not have any written information other than miscellaneous quality assurance documents but "that both contractors did good work and would probably have received very good past performance ratings on completed ship repair packages." Thus, had Earl identified that work in its proposal and been formally evaluated on it, as the protester appears to believe should have happened, Earl would apparently have received a higher rating than the satisfactory/neutral that it received for past performance.

For the same reason, the record does not support the protester's contention that Earl should have received less than a satisfactory rating. As explained above, SUPSHIP Jacksonville had no past performance data on Earl in-house and Earl did not submit a list of prior contracts. The Navy believed that, in accordance with Federal Acquisition Regulation (FAR) § 15.608(a)(2)(iii) (June 1997), which provides that firms "lacking relevant past performance history shall receive a neutral evaluation for past performance," it was appropriate to rate Earl satisfactory with an overall risk of moderate. The mere fact that an offeror does not list any previous contracts does not, by itself, warrant a neutral past performance evaluation where the agency is aware of such contracts. Here, however, while the Navy was aware of work Earl was performing for SUPSHIP Portsmouth, the agency did not have past performance information on any completed contract of Earl's (which it believed was needed for purposes of an evaluation), and had only an oral statement regarding the ongoing work at SUPSHIP Portsmouth. While having even limited past performance information would normally preclude assigning a neutral rating, here, as explained above, such a rating could only have been less advantageous to Earl than would an assessment based on the oral information provided by SUPSHIP Portsmouth. Under these circumstances, the Navy's evaluation of Earl's past performance as satisfactory/neutral was not unjustifiably favorable.

Braswell also argues that, even assuming that Earl was entitled to a neutral rating, the agency improperly equated neutral with satisfactory, thus giving Earl a substantive rating which encompassed specific, positive attributes and no weaknesses. We see no basis to question the agency's evaluation of Earl's proposal in this regard. [DELETED]:

[DELETED]

Based on the agency's definition of a satisfactory rating, we cannot say that it does not equate to a "neutral" rating. Here, the Navy's definition of satisfactory generally reflects an average evaluation with no major strengths or weaknesses, and was thus the rating closest to a neutral assessment. The agency reasonably equated a lack of past performance information with a past performance history that was neutral, in

the sense that it was neither positive nor negative. See Oceaneering Int'l. Inc., B-278126, B-278126.2, Dec. 31, 1997, 98-1 CPD ¶ 133 at 7. Indeed, while the agency reasonably evaluated Earl's past performance as essentially neutral because of a lack of enough information for a full evaluation, the limited information that was available for Earl may have warranted a more favorable evaluation. In either instance, Braswell was not adversely impacted by the evaluation.

## SELECTION DECISION

In its initial protest, Braswell argued that the Navy's best value determination was arbitrary and an abuse of discretion, and not in accordance with the Navy's SSP, because even with an "unsatisfactory" past performance rating, Braswell's price was so far below that of the awardee that it was entitled to award. Braswell refined this argument to the position that the best value decision was flawed because it is based on an irrational and arbitrary past performance evaluation of Braswell and the awardee. As explained above, we find unobjectionable the agency's past performance evaluation of both offerors. In a best value procurement, price is not necessarily controlling in determining the offer that represents the best value to the government. Rather, that determination is made on the basis of whatever evaluation factors are set forth in the solicitation, with the source selection official often required to make a price/technical tradeoff to determine if one proposal's technical superiority is worth the higher cost that may be associated with that proposal. In this regard, price/past performance tradeoffs are permitted when such tradeoffs are consistent with the solicitation's evaluation scheme. USA Elecs., B-275389, Feb. 14, 1997, 97-1 CPD ¶ 75 at 3. Where, as here, an RFP identifies past performance and price as the evaluation criteria, proposals must be evaluated on that basis, and ultimately the selection official may have to decide whether a higher-priced proposal submitted by an offeror with a better past performance rating represents the best value to the government. Id.

Here, the Navy reasonably determined that the difference in price between the two proposals was less significant than the concerns over Braswell's unsatisfactory past performance record. See H.F. Henderson Indus., B-275017, Jan. 17, 1997, 97-1 CPD ¶ 27 at 2-3. Accordingly, we see nothing improper in the source selection decision.

The protest is denied.

Comptroller General  
of the United States